

**Supplemental Letter of Findings: 01-20171272
Individual Income Tax
For the Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

On rehearing, Individual again failed to establish he was not an Indiana resident during 2013; Individual sought and received a homestead credit on his Indiana home, and Individual listed Indiana as his home address on his state and federal tax returns.

ISSUE

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-1.1-12-37(a)(2); IC § 6-1.1-12-37(e); IC § 6-1.1-12-37(f); IC § 6-3-1-12; IC § 6-8.1-5-1(c); [45 IAC 3.1-1-21](#); [50 IAC 24-2-5](#); Letter of Findings 01-20170536 (August 31, 2017).

Taxpayer protests the Department's assessment of 2013 individual income tax on the ground that he was not an Indiana resident during 2013.

STATEMENT OF FACTS

Taxpayer is an individual retiree who formerly lived in Indiana and now lives in California. The Indiana Department of Revenue ("Department") contacted Taxpayer in a December 2016 letter. The letter stated that "[b]ased on information reported to the Indiana Department of Revenue, you may have unreported income for tax year 2013." The letter directed Taxpayer to file a 2013 Indiana tax return, send a copy of a previously filed 2013 Indiana tax return, or "[s]end a letter that explains why you were not required to file a 2013 Indiana income tax return."

Taxpayer responded that he was a California resident and that all his income was derived from his California employer. Taxpayer further explained that, although he periodically spent time in Indiana, he maintained an apartment in California. In addition, Taxpayer completed the Department's "Residency Checklist" on which Taxpayer explained he "has a summer home that belonged to [his] family"

The Department issued Taxpayer a proposed assessment of additional 2013 income tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer explained the basis for his protest. A Letter of Findings was issued August 31, 2017. In that Letter of Findings, the Department concluded that Taxpayer failed to establish that he abandoned his Indiana domicile and was required to file a 2013 Indiana income tax return.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

As in his original protest, the issue is whether Taxpayer has established that he was not an Indiana resident during 2013 and - as a result - was not required to file an Indiana income tax return that year.

This Supplemental Letter of Findings incorporates by reference the statement of law and facts as set out in the original administrative decision designated Letter of Findings 01-20170536 (August 31, 2017), 20171129 Ind. Reg. 045170517NRA. For example, because the issue stems from an assessment of additional tax, Taxpayer continues to have the statutory burden of establishing that the assessment was wrong. IC § 6-8.1-5-1(c). As explained in the August Letter of Findings, Indiana imposes its individual income tax on "(a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of

residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#).

In this instance, Taxpayer states that he occupies a California apartment, that all of his income is received from a California employer, and that he only periodically returns to Indiana to assist family members. Taxpayer states that he only "intend[s] to move back to Indiana on January 1st 2019"

In part, the Department determined that Taxpayer was a 2013 Indiana resident because he claimed the "homestead credit" on an Indiana home owned by Taxpayer and his wife. In the original protest, Taxpayer explained that he moved to California in 1979 and that he acquired the Indiana home which he eventually intends to use as his permanent retirement home.

Taxpayer has provided documents purporting to establish that he was a California resident during 2013.

- 2013 California income tax return showing his Indiana home address;
- 2013 federal income tax return showing his Indiana home address;
- California driver's license showing his Indiana home address;
- 1099 and W-2 statements from California and Indiana payors;
- 2013 California lease agreement.

Much of Taxpayer's documentation reflects Taxpayer's Indiana address. Some of the W-2s list Taxpayer's Indiana home address; Taxpayer's federal income tax return lists Taxpayer's Indiana home address; the California income tax return lists Taxpayer's Indiana home address. While Taxpayer rents an apartment in California, Taxpayer owns a home in Indiana for which he obtained an Indiana homestead credit.

Taxpayer responds explaining that he contacted the Indiana county taxing authority and asked that the homestead credit be removed for 2013. However, Taxpayer has provided no documentation to that effect; there is no indication that the 2013 credit was revoked or that Taxpayer paid any additional county tax as a result of the revocation. A current review of the county records indicates that Taxpayer sought and obtained the 2013 homestead credit on the ground that his Indiana home was "owner occupied." A review of the available documentation indicates that Taxpayer also sought and received the homestead credit in 2011 and 2012.

Indiana law defines "[h]omestead" as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns" IC § 6-1.1-12-37(a)(2). "Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." [50 IAC 24-2-5](#). A taxpayer is entitled to claim a deduction, known as homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

Given the fact that Taxpayer owns an Indiana home, claimed the Indiana homestead credit on that home, "intends to move *back* to Indiana . . . ," repeatedly used the Indiana location as his official mailing address, and received Indiana source income, the Department is not prepared to agree that Taxpayer has established that the proposed assessment was wrong. Taxpayer has not established that he abandoned his Indiana domicile or his residency status for purposes of the Indiana individual income tax and remains subject to the privileges and responsibilities of that status.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 03/28/2018 by Legislative Services Agency
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